

Faulk, Camilla

From: Marilyn Brenneman [maribren@msn.com]
Sent: Wednesday, April 27, 2011 5:55 PM
To: Faulk, Camilla
Subject: Proposed changes to Rule 4.11 (Requiring witnesses to submit to recorded interviews)

Dear Ms. Faulk,

As of May 1st I will officially retire from 30+ years in public law as a King County Prosecuting Attorney. I intend to continue to practice as a private attorney. Since I was also a defense attorney for a short period, you may want to consider my comments as coming from someone with experience, past and future, on both sides.

I strongly oppose the proposed changes requiring witnesses to submit to recorded interviews.

For either a prosecutor or defense attorney it is already challenging to get cooperation from potential "neutral" witnesses-those people with information but no stake in the outcome. Yet, not surprisingly, these witnesses are often the source of information the factfinder finds important. *Imposing* conditions that such a witness may feel are intimidating will only increase the difficulty in obtaining their cooperation and, in the process, frustrate the likelihood of a just result.

It is unclear to me on what legal basis a court can impose interview requirements on a *potential* witness prior to a trial. Either side may list numerous *potential* witnesses. Does the mere listing of a citizen as a potential witness by a party to a case give the court jurisdiction over that individual prior to trial?

At the present time either the prosecution or defense counsel are free to request that interviews be recorded and to explain why they want to follow this procedure. In my experience witnesses most often agree to this suggestion. And, if the witness declines to be recorded, the interviewing attorney is free to have someone there to take careful notes. This procedure fully achieves the only legitimate purpose of the interview-to obtain information about what the witness knows and can testify to at trial.

The current process is a fair one that serves the ends of justice without unnecessarily sacrificing an individual citizen's rights solely because s/he has been named by either the defense or prosecution as a potential witness.

It is my firm belief that it should remain the right of any potential witness to decline to be recorded during pretrial interviews by either side.

Sincerely,
Marilyn B. Brenneman
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